

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY MINOR,

Petitioner,

v.

T. JOHNSON,

Respondent.

No. 1:23-cv-00411-SKO (HC)

**ORDER GRANTING PETITIONER'S
MOTION TO AMEND PETITION TO
INCLUDE ADDITIONAL DOCUMENTS**

[Doc. 10]

**ORDER GRANTING RESPONDENT
OPPORTUNITY TO SUBMIT
SUPPLEMENTAL BRIEFING**

Petitioner is a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On March 20, 2023, Petitioner filed the instant petition. (Doc. 1.) On May 22, 2023, Respondent filed a motion to dismiss the petition. (Doc. 8.) Petitioner filed a response to the motion on June 14, 2023. (Doc. 9.)

On June 23, 2023, Petitioner filed a motion to amend the petition to include additional documentation. (Doc. 10.) Petitioner seeks to include a mugshot and a police report concerning a DWI conviction. Petitioner states that the documents show that the DWI conviction was the result of mistaken identity, and that it was not Petitioner who was driving while intoxicated in the misdemeanor case. He further submits that the probation office ultimately agreed and accepted Petitioner's argument and struck the assignment of two (2) criminal history point for the DWI

conviction. He contends that these documents support his argument that he was not serving a ninety (90) day sentence for a DWI conviction from May 4, 2011, through August 2, 2011, and that this time should be credited toward his federal sentence. Respondent has not filed an opposition to Petitioner's motion.

Rule 15(a) of the Federal Rules of Civil Procedure permits a party to amend its pleading once as a matter of course within twenty-one (21) days after serving it, or within twenty-one (21) days after service of a responsive pleading. Here, Respondent filed a motion to dismiss on June 14, 2023. (Doc. 9.) Petitioner filed his motion to amend on June 23, 2023, which was within the twenty-one (21) day period. (Doc. 10.) Therefore, the Court will grant Petitioner's motion to amend and permit the parties to submit additional briefing.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED:

- 1) Petitioner's motion to amend his petition to include additional documents (Doc. 10) is GRANTED;
- 2) Respondent is DIRECTED to file a supplemental brief addressing the additional documents submitted by Petitioner within thirty (30) days of the date of service of this order; and
- 3) Petitioner MAY FILE a reply to Respondent's brief within fourteen (14) days of the date of service of Respondent's brief.

IT IS SO ORDERED.

Dated: July 7, 2023

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE